

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:98-CR -37-12-F2

UNITED STATES OF AMERICA, )  
                                )  
                                )  
v.                            )  
                                )  
TIVARUS MONTIENTO McRAE, )  
Defendant.                  )

O R D E R

This matter again is before the court, this time for ruling on petitioner Tivarus McRae's ("McRae") "Omnibus Motion to Modify Sentence, 18 U.S.C. § 3582(c)(1)(B), Petition for a Writ of Mandamus" [DE-805]. He specifies that his motion is not to be construed as one pursuant to 28 U.S.C. § 2255, and he also invokes the All Writs Act, and several Federal Rules of Civil Procedure.

McRae again seeks relief from his 352-month sentence imposed upon his conviction after a jury trial of violations of 21 U.S.C. § 846 – Count One (conspiracy to distribute and possess with the intent to distribute cocaine base (crack) and cocaine powder, heroin and marijuana), and 18 U.S.C. § 924(c) – Count Twenty-Six (use and carry firearm during and in relation to a drug trafficking offense). His conviction and sentence were affirmed on appeal and his many collateral attacks have been denied over a period exceeding a decade. The instant motion contains a variety of grounds he believes entitles him to relief.

The court again has reviewed McRae's case, together with the instant motion and the arguments and theories contained therein. Having done so, the court remains convinced that McRae is not entitled to relief from his sentence under any ground he has advanced. Accordingly, McRae's Omnibus Motion to Modify Sentence [DE-805] is DENIED.

SO ORDERED.

This, the 19 day of September, 2012.

*James C. Fox*  
\_\_\_\_\_  
JAMES C. FOX  
Senior United States District Judge